

Hardwood Federation - January 2023 Newsletter

From the Executive Director: *Clean Water Act “Tug of War” Portends Pivot to Exercise of Regulatory Authority*

Just as 2022 was ending, the Environmental Protection Agency (EPA) [announced](#) a final rule to establish yet another definition of “waters of the United States” (WOTUS). This action is the latest attempt to settle the regulatory back-and-forth over the scope of federal Clean Water Act (CWA) jurisdiction that has prevailed over the past four Administrations. By way of background, the CWA regulates agricultural and industrial discharges into waterways falling into the WOTUS category, thereby triggering permitting requirements that may encumber the use of private property, including timber harvest. Although the CWA defines impacted waterways as a “navigable water,” the law does not provide additional statutory clarity about what exactly “navigable” means, therefore punting the issue to a series of EPA rulemakings and related litigation.

The latest version of the rule will go into effect 60 days after publication in the Federal Register. EPA’s final rule, which will define the scope of federal water permits, restores onerous requirements that were in place prior to the “navigable waters rule” issued in 2015 under the previous administration. Agriculture groups characterized the Trump EPA’s “navigable waters rule,” issued in 2020, as having more clarity and flexibility than past iterations of the regulations. That said, the “navigable waters rule” also created uncertainty in the court system, with a federal court having vacated and remanded the regulations in August 2021.

The expanded WOTUS rule will have direct impacts on the hardwood sector. The expanded definition of navigable waterways will increase the scope of certain permit requirements, such as the use of herbicides in forest management into or over waterways meeting rule requirements. Added administrative burdens and legal uncertainties associated with the expansion can also drive down forestland values, thereby hastening forest conversion to other uses. Forest retention and expansion is an important tool for preserving water quality.

By increasing pressure on forest conversion, the proposed expansion could ultimately reduce water quality protections in forested areas, thereby undermining key tenets of the CWA. The new rule may also create uncertainty over the applicability of mandatory Best Management Practices (BMPs) for certain forestry activities. For example, expanding a WOTUS designation to an entire floodplain will create significant uncertainty regarding the extent of mandatory BMP applications for wetlands, particularly in areas where mandatory BMPs are unnecessary.

A broad cross-section of industry groups, including the American Farm Bureau Federation, are criticizing the new rule, claiming it will expand regulators' reach over private property. The U.S. Chamber of Commerce has also [expressed skepticism](#) and urges the Administration to pause new requirements before moving forward with regulations that may create additional uncertainty. Congressional leaders are also weighing in, with hardwood industry ally Rep. GT Thompson (R-PA) characterizing the rule as a "land grab."

Assuming that past is prologue, litigation will no doubt follow issuance of the latest WOTUS rule. In the wake of the 2015 version, 27 states filed lawsuits challenging the Obama Administration's action. Industry groups, including the National Alliance of Forest Owners (NAFO), along with thirteen other multi-industry groups, also filed a lawsuit, arguing that the 2015 regulations were inconsistent with the CWA and exceeded the agencies' authority under the Constitution to regulate interstate commerce.

The path to fixing a key pillar of the broken CWA goes directly through Congress. Amending the CWA and clarifying statutory definitions provides the best chance of removing this important permitting issue from the agencies and the courts. It will be interesting to see what, if any, legislation is put forward that can finally put this lingering issue to bed. The Federation will keep you posted on legislative and legal remedies that may emerge to mitigate the impacts of the new rule.

Issues:

Save the Date! The Federation Fly-In Takes Off in June

Hardwood Federation Fly-in 2023 - We're Back! The Hardwood Federation Fly-In returns in 2023! We will be gathering in Washington, D.C. from June 13-15, meeting with your Senators and Congressmen, networking with your peers and seeing the sights of D.C. More details will be shared in the near future, but for now, save those June dates...we hope to see you in D.C.!

Industry Gets 60 More Days Before New NLEB Regs Go Live

On January 25, the U.S. Fish and Wildlife Service (USFWS) [extended](#) the effective date of the final rule reclassifying the northern long-eared bat (NLEB) from threatened to endangered, going against the Federation's comments submitted on the proposal in 2022. USFWS had originally pinpointed the compliance date for January 30, 2023 and has pushed it back to March 31, 2023. The extra 60 days is intended to give industry and other stakeholders breathing room so that they can "preview" temporary guidance documents and management tools prior to the rule's effective date. As previously reported, the feds formally up classed the NLEB to endangered in final regulations issued in November. For more information on the NLEB, please click [here](#).

House and Senate Roll Up Their Sleeves on 2023 Farm Bill

Following a one-week delay caused by a protracted debate to name a House Speaker, on Friday, January 13, House Agriculture Committee Chair GT Thompson (R-PA) convened a listening session at the Pennsylvania Farm Show to review key topics for the farm bill, which Congress will reauthorize in 2023. With spending concerns taking center stage in most legislation that will move in the House this session, Rep. Thompson stated that he would work with the Budget Committee to outline the bill's parameters, thereby avoiding potential gridlock over federal spending issues moving forward.

Matt Gabler, Executive Director of the Pennsylvania Forest Products Association, a Federation member association, provided input on behalf of the forest products community, highlighting areas of importance to the hardwood

sector in the Farm Bill. Gabler noted. “We are looking to this Farm Bill as an important opportunity to optimize the management of federal lands, improve the outreach and educational materials available to the public, and ensure that our commodities effectively reach domestic and foreign consumers.”

On the other side of the Capitol, on January 25, Senate Agriculture Committee Chair Debbie Stabenow (D-MI), who has recently announced her retirement in 2024, and Ranking Member John Boozman (R-AR) [announced](#) the panel’s first farm bill hearing of 2023, scheduled for Wednesday, February 1. Panel members will be focusing on trade and horticulture issues and receive testimony from Alexis Taylor, USDA’s Undersecretary for Trade and Foreign Agricultural Affairs. The committee has set up a rigorous schedule for the first quarter, including a hearing on conservation and forestry programs scheduled for Wednesday, March 1. The Federation will keep you posted on committee action as it pertains to the industry’s farm bill agenda.

Budget Pressure, Tax Law “Sunsets” to Launch Revenue, Spending Debate

As many of the tax breaks included in the industry-supported Tax Cuts and Jobs Act, the revenue reform law that passed in late 2017, are set to expire, Congress is laying the groundwork for a show-down over tax rates during the next two years. Because congressional Democrats successfully raised corporate rates in the Inflation Reduction Act, many are discussing a roll-back on breaks for small business deductions as an offset for future spending. The hardwood industry and its allies in the small business community are already planning to go on offense by pushing full repeal of the estate tax early in the session. The Federation will keep you posted on developments on the tax front as events unfold.

Administration Throws More Dollars at Western Wildfires

Moving forward with next steps on USDA’s Wildfire Crisis Strategy, on January 19, Secretary Vilsack announced that the Administration would allocate an additional \$490 million to reduce wildfire risk across the country. USDA’s efforts

will focus on 11 landscapes in high-risk areas in Arizona, California, Idaho, Nevada, Oregon, Utah and Washington. USDA cites money made available by the Inflation Reduction Act and Bipartisan Infrastructure Law as the source of the new funds. To learn more about new efforts to combat wildfires, please click [here](#).

Bipartisan Lawmakers Introduce Bill to Improve Supply Chains

On January 24, U.S. Reps. Dusty Johnson (R-S.D.) and Jim Costa (D-CA) introduced The Safer Highways and Increased Performance for Interstate Trucking (SHIP IT) Act (H.R. 471), a sweeping overhaul of the interstate trucking supply chain system. The bill aims to increase safety and shipping capacity for truckers and create recruitment and retention incentives for drivers, addressing the nation-wide driver shortage.

Rep. Johnson pointed out that “Americans experienced a slew of freight disruptions during and after the COVID-19 pandemic,” including bottlenecks at our nation’s ports, which Congress has addressed. He further stated that “it’s clear that updates are needed for other parts of the supply chain.” To that end, the SHIP IT Act will bridge gaps, keep costs down for consumers, and make it easier for shippers to move products across the U.S.”

Rep. Costa underscored the costs to American consumers and industry, who ultimately bear the brunt of supply chain bottlenecks. According to Rep. Costa, “disruptions in our trucking supply chain continue to drive up costs and create uncertainty for American consumers and producers.” He underscored the need to address the driver shortage, pointing out the need “to recruit, train, and retain truck drivers to keep our supply chain moving, while also updating best practices to improve trucking to fit our modern economy.”

While the bill has been referred to the House Committees on Transportation, Workforce and Ways and Means, a path forward for the bill is not known at this time. The Federation will keep you posted on next steps related to the bill.

Reps. Spanberger (D-VA) and Gallagher (R-WI) to Reintroduce Trucker Supply Bill

During the weeks ahead, industry allies Rep. Abigail Spanberger (D-VA) and Rep. Mike Gallagher (R-WI) plan to reintroduce a bill to address the trucker shortage, the “Strengthening Supply Chains Through Truck Driver Incentives Act.” The [text](#) of the legislation will be identical to the bill introduced last Congress, with relevant date modifications clarifying the scope of tax incentives.

The bipartisan “Strengthening Supply Chains Through Truck Driver Incentives Act” will create a short-term incentive to attract and retain new drivers. Specifically, the bill will establish a two-year refundable tax credit of up to \$7,500 for truck drivers holding a valid Class A commercial driver’s license (CDL) who drive at least 1,900 hours in the year. Additionally, it would establish new incentives for workers to enter registered trucking apprenticeships.

In 2021, the U.S. fell short a record-breaking 80,000 truck drivers. This acute shortage, one of the most severe in the labor market, causes delayed and higher shipping costs, leading to higher prices of consumer goods. Creating public policies that address the truck driver shortage will address two major challenges facing the broader economy – consumer inflation and supply chain bottlenecks.

Bipartisan Lawmakers to Re-Introduce LICENSE Act

In addition to the measures described above, the LICENSE Act (Licensing Individual Commercial Exam Takers Now Safely and Efficiently Act) is also being readied for reintroduction. Recall that this bill authorizes third-party CDL skills test examiners to also administer a state’s CDL knowledge test, allowing license seekers additional avenues to take both required tests from a single source instead of taking the tests from different vendors. The bill also allows states to administer the driving skills test to out-of-state license seekers regardless of where they received their training. Currently, license seekers have to take the skills test in the same state in which they were trained. These are two commonsense reforms to the existing system that will expedite CDL issuance. The legislation was a bicameral, bipartisan bill last Congress that

enjoyed widespread support. We are hopeful the most beneficial of all of these supply chain/trucking bills makes it to the President's desk this year.

HAPPENING IN THE HARDWOOD WORLD:

As fuel prices continue to climb during the winter months, wood banks in Maine are increasing their supplies to meet rising demand from those priced out of home heating oil and natural gas. In October, the University of Maine (UMaine) received a \$62,500 grant from USDA for the [National Wood Bank Project](#), a program that will help create more wood banks and exchanges among similar programs throughout the country. "Ultimately, we will create a peer network of wood banks to support one another as they serve their communities and help those in need with heat through the winters," states a UMaine spokesperson.